

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CIVIL ACTION NO:

Provident Funding Associates, L.P.

Plaintiff

vs.

Janet Ann Bolduc

Defendant

COMPLAINT

RE:

18 Columbia Street, Lewiston, ME 04240

Mortgage:

November 28, 2006

Book 6992, Page 22

NOW COMES the Plaintiff, Provident Funding Associates, L.P., by and through its attorneys, Doonan, Graves & Longoria, LLC, and hereby complains against the Defendant, Janet Ann Bolduc, as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant 28 U.S.C. § 1332(a)(1) (Diversity) because the Plaintiff and the Defendant are citizens of different states and the matter in controversy exceeds the sum or value of seventy-five thousand and 00/100 (\$75,000.00) dollars, exclusive of interest and costs. Any Court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought under 28 U.S.C. § 2201.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because the object of this litigation is a promissory note executed under seal currently owned and held by the Plaintiff, Provident Funding Associates, L.P., in which the Defendant, Janet Ann Bolduc, is the obligor and the total amount owed under the terms of the Note is one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), plus attorney fees and costs associated with the instant action; thus, the amount in controversy exceeds the jurisdictional threshold of seventy-five thousand (\$75,000.00) dollars.
3. Venue is properly exercised pursuant to 28 U.S.C. §1391(b)(2) insofar as all or a substantial portion of the events that give rise to the Plaintiff's claims transpired in Maine and the property is located in Maine.

### PARTIES

4. The Plaintiff, Provident Funding Associates, L.P., is a corporation organized under the laws of the State of California, with its principal place of business located at 1235 North Dutton Avenue, Suite E, Santa Rosa, California 95401
5. The Defendant, Janet Ann Bolduc, is a resident of Lewiston, County of Androscoggin and State of Maine.

### FACTS

6. On March 4, 1997, by virtue of a Maine Short Form Deed of Distribution from Janet Ann Bolduc f/k/a Jane Bolce, Personal Representative of the Estate of Gerald J. Pintal, which is recorded in the Androscoggin County Registry of Deeds in **Book 3745, Page 306**, the property situated at 18 Columbia Street, County of Androscoggin, and State of Maine, was conveyed to the Defendant, Janet Ann Bolduc, being more particularly described by the attached legal description. *See* Exhibit A (a true and correct copy of the legal description is attached hereto and incorporated herein).

7. On November 28, 2006, the Defendant, Janet Ann Bolduc, executed and delivered to Virtualbank, a Division of Lydian Private Bank a certain Note in the amount of \$144,000.00. *See* Exhibit B (a true and correct copy of the Note is attached hereto and incorporated herein).
8. To secure said Note, on November 28, 2006, the Defendant, Janet Ann Bolduc, executed a Mortgage in favor of Mortgage Electronic Registration Systems, Inc. as nominee for Virtualbank, a Division of Lydian Private Bank, securing the property located at 18 Columbia Street, Lewiston, ME 04240, which Mortgage is recorded in the Androscoggin County Registry of Deeds in **Book 6992, Page 22** (herein after referred to as the “Mortgage”). *See* Exhibit C (a true and correct copy of the Mortgage is attached hereto and incorporated herein).
9. The Mortgage was then assigned to Provident Funding Associates, L.P. by virtue of an Assignment of Mortgage dated September 11, 2013, and recorded in the Cumberland County Registry of Deeds in **Book 8784, Page 186** (herein after referred to as the “Assignment”). *See* Exhibit D (a true and correct copy of the Assignment is attached hereto and incorporated herein).
10. The transfer of all the rights contained in the Mortgage to the Plaintiff was further ratified and confirmed by virtue of a Quitclaim Assignment dated May 24, 2016, and recorded in the Cumberland County Registry of Deeds in **Book 9407, Page 342** (herein after referred to as the “Quitclaim Assignment”). *See* Exhibit E (a true and correct copy of the Quitclaim Assignment is attached hereto and incorporated herein).

11. On June 22, 2016, the Defendant, Janet Ann Bolduc, was sent a Notice of Mortgagor's Right to Cure, which was returned unclaimed on or about July 21, 2016 (herein after referred to as the "Demand Letter"). *See* Exhibit F (a true and correct copy of the Demand Letter is attached hereto and incorporated herein).
12. The Demand Letter informed the Defendant, Janet Ann Bolduc, of the payment due date, the total amount necessary to cure the default, and the deadline by which the default must be cured, which was thirty-five (35) days from receipt of the Demand Letter. *See* Exhibit F.
13. The Defendant, Janet Ann Bolduc, failed to cure the default prior to the expiration of the Demand Letter.
14. The Plaintiff, Provident Funding Associates, L.P. is the present holder of the Note pursuant to possession of the Note in conformity with 11 M.R.S. § 3-1201, et seq., 10 M.R.S. § 9416, and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929).
15. The Plaintiff, Provident Funding Associates, L.P. is the lawful holder and owner of the Note and Mortgage.
16. The total debt owed under the Note and Mortgage as of September 26, 2016, is one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), which included unpaid principal in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$127,411.04), unpaid interest in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$15,808.23), escrow advance balance in the amount of four thousand seventy three dollars and seventy three cents (\$4,073.73), corporate advances in the amount of two thousand ninety six dollars and thirty nine cents (\$2,796.39), and late charges fees in the amount of nine hundred thirty dollars and ninety three cents (\$930.93).

COUNT I – FORECLOSURE

17. The Plaintiff, Provident Funding Associates, L.P., repeats and realleges paragraphs 1 through 16 as if fully set forth herein.
18. This is an action for foreclosure respecting a real estate related Mortgage and title located at 18 Columbia Street, City of Lewiston, County of Androscoggin, and State of Maine. *See* Exhibit A.
19. The Plaintiff is the holder of the Note referenced in Paragraph 7 pursuant to endorsement by the previous holder (if applicable) and physical possession of the aforesaid note in conformity with Title 11, section 3-1201, et seq. Of the Maine Revised Statutes and *Simansky v. Clark*, 147 A. 205, 128 Me. 280 (1929). As such, the Plaintiff has the right to foreclosure upon the subject property.
20. The Plaintiff Provident Funding Associates, L.P. is the current owner and investor of the aforesaid Mortgage and Note.
21. The Defendant, Janet Ann Bolduc, is presently in default on said Mortgage and Note, having failed to make the monthly payment due November 1, 2014, and all subsequent payments, and, therefore, has breached the condition of the aforesaid Mortgage and Note.
22. The total debt owed under the Note and Mortgage as of September 26, 2016, is one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), which included unpaid principal in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$127,411.04), unpaid interest in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$15,808.23), escrow advance balance in the amount of four thousand seventy three dollars and seventy three cents (\$4,073.73), corporate advances in the amount of two thousand ninety six dollars

and thirty nine cents (\$2,796.39), and late charges fees in the amount of nine hundred thirty dollars and ninety three cents (\$930.93).

23. The record established through the Androscoggin County Registry of Deeds indicates that there are no public utility easements recorded subsequent to the Mortgage and prior to the commencement of these proceedings affecting the Mortgaged premises at issue herein.

24. By virtue of the Defendant's breach of condition, the Plaintiff hereby demands a foreclosure on said real estate.

25. Notice in conformity with 14 M.R.S.A. §6111 was sent to the Defendant, Janet Ann Bolduc, on June 22, 2016, and returned unclaimed on or about July 21, 2016. *See* Exhibit F

26. The Defendant, Janet Ann Bolduc, is not in the Military as evidenced by the attached Exhibit G.

### COUNT II – BREACH OF NOTE

27. The Plaintiff, Provident Funding Associates, L.P. repeats and re-alleges paragraphs 1 through 26 as if fully set forth herein.

28. On November 28, 2006, the Defendant, Janet Ann Bolduc, executed and delivered to Virtualbank, a Division of Lydian Private Bank a certain Note in the amount of \$144,000.00. *See* Exhibit B.

29. The Defendant, Janet Ann Bolduc, is in default for failure to properly tender the November 1, 2014, payment and all subsequent payments. *See* Exhibit F.

30. The Plaintiff, Provident Funding Associates, L.P., is the proper holder of the Note and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendant, Janet Ann Bolduc.

31. The Defendant, Janet Ann Bolduc, having failed to comply with the terms of the Note and Mortgage, are in breach of both the Note and the Mortgage.

32. The Defendant, Janet Ann Bolduc's, breach is knowing, willful, and continuing.
33. The Defendant, Janet Ann Bolduc's, breach has caused the Plaintiff, Provident Funding Associates, L.P., to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.
34. The total debt owed under the Note and Mortgage as of September 26, 2016, is one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), which included unpaid principal in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$127,411.04), unpaid interest in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$15,808.23), escrow advance balance in the amount of four thousand seventy three dollars and seventy three cents (\$4,073.73), corporate advances in the amount of two thousand ninety six dollars and thirty nine cents (\$2,796.39), and late charges fees in the amount of nine hundred thirty dollars and ninety three cents (\$930.93).
35. Injustice can only be avoided by awarding damages for the total amount owed under the Note including interest, plus costs and expenses, including attorney fees.

### COUNT III – BREACH OF CONTRACT, MONEY HAD AND RECEIVED

36. The Plaintiff, Provident Funding Associates, L.P., repeats and re-alleges paragraphs 1 through 35 as if fully set forth herein.
37. By executing, under seal, and delivering the Note, the Defendant, Janet Ann Bolduc, entered into a written contract with Virtualbank, a Division of Lydian Private Bank who agreed to loan the amount of \$144,000.00 to the Defendant, Janet Ann Bolduc. *See* Exhibit B.
38. As part of this contract and transaction, the Defendant, Janet Ann Bolduc, executed the Mortgage to secure the Note and the subject property. *See* Exhibit C.

39. The Plaintiff, Provident Funding Associates, L.P., is the proper holder of the Note and successor-in-interest to Virtualbank, a Division of Lydian Private Bank, and has performed its obligations under the Note and Mortgage.
40. The Defendant, Janet Ann Bolduc, has breached the terms of the Note and Mortgage by failing to properly tender the November 1, 2014, payment and all subsequent payments. *See* Exhibit G.
41. The Plaintiff, Provident Funding Associates, L.P., is the proper holder of the Note, and is entitled to enforce the terms and conditions of the Note due to its breach by the Defendant, Janet Ann Bolduc.
42. The Defendant, Janet Ann Bolduc, having failed to comply with the terms of the Note and Mortgage, is in breach of contract.
43. The Defendant, Janet Ann Bolduc, is indebted to the Plaintiff, Provident Funding Associates, L.P., in the sum of one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), for money lent by Plaintiff to the Defendant.
44. The Defendant, Janet Ann Bolduc's, breach is knowing, willful, and continuing.
45. The Defendant, Janet Ann Bolduc's, breach has caused the Plaintiff, Provident Funding Associates, L.P., to suffer actual damages, including, but not limited to money lent, interest, expectancy damages, as well as attorney's fees and costs.
46. The total debt owed under the Note and Mortgage as of September 26, 2016, is one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), which included unpaid principal in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$127,411.04), unpaid interest in the amount of one hundred twenty-seven thousand, four hundred eleven dollars and four cents (\$15,808.23), escrow advance balance in the amount of four thousand seventy three dollars and seventy



three cents (\$4,073.73), corporate advances in the amount of two thousand ninety six dollars and thirty nine cents (\$2,796.39), and late charges fees in the amount of nine hundred thirty dollars and ninety three cents (\$930.93).

47. Injustice can only be avoided by awarding damages for the total amount owed under the Note and Mortgage, and for money had and received, including interest, plus costs and expenses, including attorney fees.

#### COUNT IV – QUANTUM MERUIT

48. The Plaintiff, Provident Funding Associates, L.P., repeats and re-alleges paragraphs 1 through 47 as if fully set forth herein.

49. Virtualbank, a Division of Lydian Private Bank, predecessor-in-interest to Provident Funding Associates, L.P., loaned the Defendant, Janet Ann Bolduc, \$144,000.00. *See* Exhibit B.

50. The Defendant, Janet Ann Bolduc, is in default for failure to properly tender the November 1, 2014, payment and all subsequent payments. *See* Exhibit F.

51. As a result of the Defendant's failure to perform under the terms of the Note and Mortgage, the Defendant, Janet Ann Bolduc, has been unjustly enriched at the expense of the Plaintiff, Provident Funding Associates, L.P.

52. As such, the Plaintiff, Provident Funding Associates, L.P., is entitled to relief under the doctrine of *quantum meruit*.

#### COUNT V –UNJUST ENRICHMENT

53. The Plaintiff, Provident Funding Associates, L.P., repeats and re-alleges paragraphs 1 through 52 as if fully set forth herein.

54. Virtualbank, a Division of Lydian Private Bank, predecessor-in-interest to Provident Funding Associates, L.P., loaned the Defendant, Janet Ann Bolduc, \$144,000.00. *See* Exhibit B.
55. The Defendant, Janet Ann Bolduc, has failed to repay the loan obligation pursuant to the terms of the Note and Mortgage.
56. As a result, the Defendant, Janet Ann Bolduc, has been unjustly enriched to the detriment of the Plaintiff, Provident Funding Associates, L.P. as successor-in-interest to Virtualbank, a Division of Lydian Private Bank by having received the aforesaid benefits and money and not repaying said benefits and money.
57. As such, the Plaintiff, Provident Funding Associates, L.P., is entitled to relief.

#### PRAYERS FOR RELIEF

WHEREFORE, the Plaintiff, Provident Funding Associates, L.P., prays this Honorable Court:

- a) Issue a judgment of foreclosure in conformity with Title 14 § 6322;
- b) Grant possession to the Plaintiff upon the expiration of the period of redemption;
- c) Find that the Defendant, Janet Ann Bolduc, is in breach of the Note by failing to make payment due as of November 1, 2014, and all subsequent payments;
- d) Find that the Defendant, Janet Ann Bolduc, is in breach of the Mortgage by failing to make payment due as of November 1, 2014, and all subsequent payments;
- e) Find that the Defendant, Janet Ann Bolduc, entered into a contract for a sum certain in exchange for a security interest in the subject property;
- f) Find that the Defendant, Janet Ann Bolduc, is in breach of contract by failing to comply with the terms and conditions of the Note and Mortgage by failing to make the payment due November 1, 2014 and all subsequent payments;

- g) Find that Plaintiff, Provident Funding Associates, L.P., is entitled to enforce the terms and conditions of the Note and Mortgage;
- h) Find that by virtue of the Note and Mortgage, the Defendant, Janet Ann Bolduc, has been unjustly enriched at the Plaintiff's expense;
- i) Find that such unjust enrichment entitles the Plaintiff to restitution;
- j) Find that the Defendant, Janet Ann Bolduc, is liable to the Plaintiff for money had and received;
- k) Find that the Defendant, Janet Ann Bolduc, is liable to the Plaintiff for *quantum meruit*;
- l) Find that the Defendant, Janet Ann Bolduc, has appreciated and retained the benefit of the Mortgage;
- m) Find that it would be inequitable for the Defendant, Janet Ann Bolduc, to continue to appreciate and retain the benefit of the Mortgage without recompensing the appropriate value;
- n) Find that the Plaintiff, Provident Funding Associates, is entitled to restitution for this benefit from the Defendant, Janet Ann Bolduc,;
- o) Determine the amount due on said Mortgage and Note, including principal, interest, reasonable attorney's fees and court costs;
- p) Additionally, issue a money judgment against the Defendant, Janet Ann Bolduc, and in favor of the Plaintiff, Provident Funding Associates, L.P. in the amount of one hundred fifty-one thousand, twenty dollars and thirty-two cents (\$151,020.32), the total debt owed under the Note plus interest and costs including attorney's fees and costs;

q) For such other and further relief as this Honorable Court deems just and equitable.

Respectfully Submitted,  
Provident Funding Associates, L.P.,  
By its attorneys,

Dated: September 29, 2016

/s/ John A. Doonan  
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